

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3242 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALMKHAN @ ANIL LATIFKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner
MR ND GOHIL, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/01/99

ORAL JUDGEMENT

#. The prayer in this writ petition under Article 226 of the Constitution of India is to quash the detention order dated 17th February, 1998 passed by the Commissioner of Police, Ahmedabad City under Section 3(2) of the Prevention of Anti Social Activities Act (for short 'PASA Act') and for immediate release of the petitioner from illegal detention.

#. It seems that the petitioner and his counsel were not interested in prosecuting this writ petition. This was highlighted by me in my order dated 3rd December, 1998. In brief, it can be recapitulated that from the actual date of detention this writ petition was listed several times for final hearing. The order of this Court dated 28th September, 1998 shows that the matter was called out on various dates in the last week but none appeared. The case was stand out to 16th November, 1998. On 18th November, 1998, it was again listed but none appeared even in third revised round from the side of the petitioner. On 3rd December, 1998 also, the same history repeated. The list was revised twice but till 3.15 P.M., none appeared from the side of the petitioner. Still a last chance was given to the petitioner and the hearing was adjourned to 30th December, 1998. But again, none appeared from the side of the petitioner. It is how the petition comes for hearing today. Such writ petition cannot be dismissed for default. I have gone through the grounds of detention and the grounds of attack on which the grounds of detention have been challenged.

#. From the grounds of detention, it appears that the detaining authority found that the petitioner was a dangerous person within the meaning of Section 2(c) of the PASA Act. His activities were highlighted in the grounds of detention and also highlighted by confidential witnesses. The first incident is of 19th January, 1998 which took place at 4.30 P.M. when the Accountant of Kalupur Commercial Bank along with peon was going on auto rickshaw with bank's cash to the tune of Rs.8,50,000/-. The petitioner and his associates in collusion with each other under pre planned conspiracy came in Maruti Fronty and overtook the said rickshaw near the slop towards Kankaria of Khokhara Bridge and the entire cash was looted by the petitioner and his companions. A case was registered interalia under Sections 397 and 120(B) of IPC, Section 25 of Arms Act and Section 35 of Bombay Police Act. The detaining authority also considered the other criminal activities of the petitioner and branded him as dangerous person. Two witnesses also disclosed about the anti social activities of the petitioner which were prejudicial for maintenance of public order. The first witness stated that the incident dated 21st January, 1998 took place at 1.00 P.M. in the day when the wrist watch of the witness was robbed by the petitioner and his associates. The witness was beaten and when alarm was raised people of the locality collected at the spot. The petitioner and his associates ran towards those persons with open knives and therefore, atmosphere of fear and alarm was created in the area.

#. Another incident took place on 27th January, 1998 at about 5.30 P.M., when the petitioner along with his associates demanded installments of Rs.500/- from the witness for carrying on his business in the area and on refusal of the witness, the petitioner got excited dragged the witness on public road and beat him. On raising alarm, people of surrounding locality gathered and at that time, the petitioner took out a knife and threatened the witness. Thereafter, the witness ran for safety and atmosphere of fear was created in the area and the life of the people was disrupted. The detaining authority also considered the fact that the petitioner was in judicial custody and he was likely to apply for bail and on being released on bail, he may continue his anti social activities. The detaining authority further found that there was no alternative efficacious remedy to prevent the petitioner forthwith from indulging in such activities, hence the impugned order was passed.

#. The writ petition shows that possibly all the grounds relevant or irrelevant have been taken to assail the grounds of detention. I have gone through each ground of challenge.

#. General allegation that the impugned order is illegal is not enough for quashing the impugned order.

#. The next ground is that the copies of material documents were not supplied in legible form hence the petitioner's valuable right under Article 22(5) of the Constitution of India was infringed. However, it is not specified copies of which documents were not legible and on such vague allegation, the impugned order cannot be quashed.

#. The next ground is that the detaining authority has not submitted its report to the State Government. This has been countered in the detailed counter affidavit of Shri J.R.Rajput, Under Secretary, Government of Gujarat. The counter affidavit of Mr.P.G.J.Nampoothiri, Retd. Director General of Police, also shows in Para-2 that the detaining authority had submitted its report to the State Government on the very same day. Thus, this ground also loses its force.

#. I do not find any force in the challenge that the impugned order was passed mechanically. The grounds of detention show that the entire material was considered

and then the detention order was passed.

##. It is incorrect to say that on the basis of isolated activity, the petitioner has been branded as dangerous person. There are two incidents narrated by secret witnesses and also one registered criminal case and these three incidents indicate repetition of criminal activities on the part of the petitioner which are punishable under Chapter XVII of the IPC. Thus, the petitioner was rightly branded as dangerous person.

##. It is further clear from the grounds of detention, especially the narration of the incidents by the two confidential witnesses that the activities of the petitioner were prejudicial for maintenance of public order. The registered criminal case in which the petitioner allegedly looted huge cash to the tune of Rs.8,50,000/- belonging to the Kalupur Commercial Bank on the point of knife and revolver further shows that his activities created alarm and panic of such nature in the locality which could be described as activities prejudicial for the maintenance of public order within the meaning of Section 3(4) and explanation appended thereto under the PASA. Thus, the detention order was justified on the facts and circumstances of the case.

##. There is no merit in the contention and allegation that alternative, efficacious remedy was not considered by the detaining authority. In the grounds of detention itself, the detaining authority mentioned that the petitioner was in judicial custody and on being released on bail, he may continue his criminal and anti social activities prejudicial for maintenance of public order. Since the petitioner was already in Jail on the relevant time, alternative efficacious remedy of externment could not have proved to be efficacious remedy. Thus, it is incorrect that the alternative efficacious remedy was not under consideration of the detaining authority. In Para-4 of the of the counter affidavit of the detaining authority, it is mentioned that the externment proceeding under Section 59 of the Bombay Police Act were time consuming and looking to the gravity of the offence, restriction should be imposed immediately to prevent the petitioner from continuing such activities. This shows that alternative efficacious remedy was considered by the detaining authority.

##. This court in exercise of jurisdiction under Article 226 of the Constitution will not sit as a court of appeal over subjective satisfaction of the detaining authority, nor it will examine whether the statements of privileged

witnesses are genuine or not. That exercise was undertaken by the detaining authority who found that these statements were genuine. Thus, on this ground, the impugned order cannot be rendered invalid. As a consequence thereof, it cannot be observed that stereotyped statements were recorded by the sponsoring authority and the same was relied upon by the detaining authority.

##. There is no legal requirement to communicate in writing to the relatives and family members of the detenu the place of detention.

##. There is no force in the contention and allegation that the grounds of detention are incomplete. It is not shown in the writ petition how and what grounds are incomplete. On such vague ground, the order of the detention cannot be quashed.

##. Non supply of documents relating to the regular bail in the court of Metropolitan Magistrate in Crime No.37 of 1998 cannot be said to have vitiated the impugned order because the bail order or papers relating to this bail application were neither referred nor relied upon by the detaining authority. The detaining authority is obliged to furnish only those grounds and papers upon which reference and reliance has been made by him. Thus, on this ground, also the impugned order cannot be rendered invalid.

##. Another allegation is that the petitioner's representation to the Advisory Board and the respondents No. 1 & 2 through the respondent No.3 were not considered. This allegation is baseless. The counter affidavit of Shri J.R.Rajput shows that no representation was made by the petitioner to any authority whatsoever. Para-3 of the counter affidavit can be referred. If the petitioner did not make any representation, he cannot be heard to say that his representation was not decided or there was violation of Article 22(5) of the Constitution of India.

##. Another allegation is that the detaining authority was not aware of the detention and arrest of the petitioner under Section 151 of the Code of Criminal Procedure. There is no mention in the grounds of detention that the petitioner was detained under Section 151 of the Code of Criminal Procedure. If the sponsoring authority did not bring this fact to the notice of the detaining authority, unawareness of the detaining

authority about this fact, will not render the detention order invalid.

##. There is not merit in the challenge that the detaining authority passed the detention order first and then the grounds of detention were formulated. This is countered in the counter affidavit filed on behalf of the respondents.

##. There is also allegation that the detaining authority was subjectively satisfied about the petitioner's engaging in the black marketing of cinema tickets. However, this ground is not mentioned in the grounds of the detention. Hence, it is difficult to accept that the detaining authority was carried away by this anti social activity of the petitioner.

##. There is again no merit in the contention that the procedural safeguards available to the petitioner under Article 22(5) of the Constitution of India were not observed by the detaining authority. The grounds of detention were furnished so also the documents on which the grounds were formulated, and reasonable opportunity of making representation was also afforded. Thus, the procedural safeguards were observed by the detaining authority.

##. The last ground is challenge to the constitution of the Advisory Board especially the second advisory board. In writ petition of this nature, it is not necessary for this court to enter into this controversy. If such controversy is permitted to be raised then the detenu can go to the extent of saying that the appointment of the detaining authority is also not in accordance with law. The counter affidavit in detail of Shri J.R.Rajput shows that two advisory boards were constituted seeing the workload that one advisory board could not take up the entire work load. The counter affidavit of Shri J.R.Rajput further shows that formal No Objection Certificate was obtained from the Central Govt. for appointment of Shri A.N.Divecha as Chairman, and the appointment was confirmed. It is further deposed in the counter affidavit that departmental correspondence need not be published in the official gazette and that the two advisory boards were constituted in accordance with rules and section 10 of the PASA. There is presumption that official acts are done in regular and usual manner in accordance with law. Unless specific invalidity is shown in the official act, the presumption could not be

rebutted on vague grounds. I therefore do not find any necessity to enter in detail about this controversy. Suffice is to say that the advisory board was in existence when the order of detention was passed and since the detaining authority indicated that the representation can be made by the detenu to the detaining authority to the advisory board and to the State Government, there was sufficient compliance of procedural safeguards envisaged under Article 22(5) of the Constitution of India.

##. In the result, I do not find any merit in this writ petition, which is hereby dismissed.

Date : 21-1-1999. (D. C. Sirvastava, J.)

* Kailash